

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Vesta Strategies, LLC,

NO. C 07-06216 JW

Plaintiff,

v.

**ORDER DENYING AS MOOT PLAINTIFF
AND THIRD-PARTY DEFENDANTS'
MOTIONS TO DISMISS DEFENDANTS'
THIRD-PARTY AND COUNTERCLAIMS;
CONTINUING CASE MANAGEMENT
CONFERENCE**

Robert E. Estupinian, et al.,

Defendants.

On March 14, 2008, Plaintiff and Third-Party Defendants' filed various motions to dismiss. (See Docket Item Nos. 31, 33, 35.)¹ The motions are currently scheduled for hearing on May 5, 2008. On April 9, 2008, Defendants filed a First Amended Counterclaim and First Amended Third-Party Complaint. (See Docket Item No. 44.)

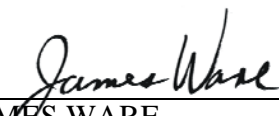
Rule 15(a) provides that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served. A motion to dismiss is not a responsive pleading within the meaning of Rule 15(a). Fed. R. Civ. P. 15(a); Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530 (9th Cir. 1995).

Accordingly, Plaintiff and Third-Party Defendants' motions to dismiss are DENIED as moot. The May 5, 2008 is VACATED. In addition, the Court continues the Case Management Conference currently scheduled for April 28, 2008 to **June 9, 2008 at 10 a.m.** to coincide with a hearing on

¹ Third-Party Defendant Peter Ye joins in Third-Party Defendant Vesta Strategies' motion.

1 Plaintiff and Third-Party Defendants' motion to dismiss and to strike. Please take note that the
2 hearing is at 9 a.m. the conference is at 10 a.m.

3
4 Dated: April 22, 2008



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: April 22, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers

**Elizabeth Garcia
Courtroom Deputy**